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In re Application of  
Moses Rodriguez et al  
Serial No.: 08/692,084  
Filed: August 8, 1996  
Attorney Docket No.: 1199-1-001

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: WITHDRAWAL OF ABANDONMENT  
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This is in response to applicants petition under 37 CFR 1.181, filed August 1, 2000, requesting withdrawal of the holding of abandonment based on the filing of a timely CPA papers. The delay in responding to this petition is regretted.

A review of the file history shows that the examiner mailed a Final Office action to applicants on March 16, 1999, setting a three month shortened statutory time period for reply. On September 16, 1999, applicants filed a Notice of Appeal to the Board of Patent Appeals and Interferences (BPAI) including a request for a three month extension of time and fee therefor as well as the Appeal fee. The paper was filed with a Certificate of Mailing dated September 16, 1999, but was not received in the Office until September 20, 1999. M.P.E.P. 1206 states as follows:

#### TIME FOR FILING APPEAL BRIEF

37 CFR 1.192(a) provides 2 months from the date of the Notice of Appeal for the appellant to file an appeal brief. In a reexamination proceeding, the time period can be extended only under the provisions of 37 CFR 1.550(c). See also MPEP § 2274. The usual period of time in which appellant must file his or her brief is 2 months from the date of appeal. The Office date of receipt of the Notice of Appeal (and not the date indicated on any Certificate of Mailing under 37 CFR 1.8) is the date from which this 2 month time period is measured. See MPEP § 512.

In view of the above guidance, the time for filing the Appeal Brief (or take other action) was two months from September 20, 1999, which could be extended under 37 CFR 1.136(a) up to five additional months. Applicants filed papers by Express Mail for a Continued Prosecution Application (CPA) on April 20, 2000, and authorization to charge the fees therefor. A request for a five month extension of time was also submitted on April 20, 2000, by first class mail. In view of the circumstances, the holding of Abandonment by the examiner is in error and is hereby vacated.

Applicants' petition is **GRANTED**. The application is restored to pending status with the mailing of this decision.

The application will be forwarded for processing of the CPA request and then forwarded to an examiner for further consideration.

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Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, Washington, DC 20231, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 308-7922.



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